IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.08.2006

Coram:

The Honourable Mr. Justice V. DHANAPALAN

A.S. No.446 of 1998

Neyveli Lignite Corporation Ltd.
represented by its Chief General Manager
Neyveli - 607 801 .. Appellant

Vs.

1. N.V. Bashyam Reddy & Co.
represented by its Managing Partner
Mr. R. Yuvaraj
42, Bashyam Reddy Street
Cuddalore - 607 001

2. G.M. Chinnasamy
No.14, Type-IV quarters
Block - 13
Neyveli - 607 803 .. Respondents

Appeal Suit filed against the judgment and decree made in O.S. No.101 of 1996 dated 09.01.1998 dated 18.06.1997 by the learned Sub-Judge, Vridhachalam.

For appellant Mr.N.A.K.Sarma

For respondents Mr.M.Krishnappan

J U D G M E N T

The above Appeal Suit is filed against the judgment and decree of the learned Sub Judge, Vridhachalam made in O.S. No.101 of 1996 dated 09.01.1998.

2. According to the plaintiff who is the first respondent herein, the suit was filed for recovery of amount of Rs.7,80,193.75 with interest @ 24% to be recovered from the second defendant who is the appellant herein. The plaintiff had entered into a contract with the defendant during 1986-87. As per the terms of the agreement, after completion of the work under the contract, the plaintiff had claimed from the second defendant the suit amount due to be paid to him and the same was not accepted by the second defendant. Therefore, an Arbitrator was appointed as per Clause 78 of the contract of agreement. Accordingly, the first defendant who is the second respondent herein was appointed as Arbitrator on 11.03.1992 to

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arbitrate the dispute. The Arbitrator conducted enquiry on 20.07.1992, 09.08.1992 and 05.09.1992 and on 10.11.1992, passed an award directing the appellant herein to pay a sum of Rs.7,80,193.75. As per Section 14(1) of the Arbitration Act, the above award has been sent to the appellant and the same was received by the appellant on 14.11.1992. The first respondent herein, on receipt of the award, filed the O.S. within 30 days claiming recovery of money. A legal notice was issued on 26.11.1992 to the appellant. Even after receipt of the legal notice, no payment was made and no proceedings were initiated against the award or to set aside the same and hence, it is the claim of the first respondent that as per Section 17 of the Arbitration Act, the entire award amount has to be paid by the appellant with interest @ 24% per annum.

3. On the side of the second defendant who is the appellant herein, a written statement was filed in which it was contended that there was an agreement for construction of airstrip at the place of the appellant and a contract was entered into for that purpose and pending final payment of the contract, a dispute arose and an Arbitrator was appointed to arbitrate the dispute.

4. It is the case of the appellant that before he starated taking action on the award, the first respondent has filed the O.S. without complying with the provision under Section 14(2) of the Arbitration Act for which a notice has been issued. Before this was served on the appellant, the suit was initiated by the plaintiff. It is the further case of the appellant that as per Section 119(B) of the Limitation Act, a suit can be filed within 30 days from the date of receipt of notice under 14(2) of Arbitration Act and therefore, appellant has taken action on the notice dated 14.11.1992 within 30 days and therefore, the suit filed by the plaintiff is not maintainable. The appellant has assailed the award of the Arbitrator on the ground that it has not been passed following the procedure contemplated under Section 30 and 33 of the Arbitration Act. According to the appellant, there is no cause of action for filing the suit and Court Fee has not been paid as per Section 22 of the Tamil Nadu Court Fees Valuation Act and as per 11(n)(4)(3) Schedule II, the Court Fees paid is not correct and therefore, the suit has to be dismissed.

5. After perusing the documents filed before him and after framing the following three issues namely,

a. whether the plaintiff is entitled to the relief claimed for,
b. whether the plaintiff has paid the Court Fee as per the Act and
c. whether the plaintiff is entitled to claim cost

the learned Sub-Judge has passed a judgment and decree holding that the appellant has to pay Rs.7,80,193.75 to the plaintiff with interest @ 12% per annum from the date of filing of the suit till the date of payment against which the appellant has filed the present appeal.

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6. Heard N.A.K.Sarma, learned counsel for the appellant and Mr. M. Krishnappan, learned counsel for the first respondent.

7. Mr.N.A.K.Sarma, learned counsel for the appellant has contended that:

a. the learned Sub Judge has erred in passing the judgment and decree against the appellant, relying upon the judgment of this Court reported in AIR 1970 Madras 347 which is totally irrelevant to the facts of the case on hand,

b. the appellant herein has attacked the award by the existence of erroneous legal propositions and mistake of law which are apparent on the face of the record,

c. the Trial Court has failed to appreciate that the appellant had already preferred an appeal against the order of dismissal of arbitration O.P. No.824 of 1996 and no final orders have been passed in the appeal,

d. the findings of the learned Sub Judge that the Court cannot interfere with the award passed by the Arbitrator is erroneous,

e. the learned Sub-Judge has failed to appreciate that there has been no refusal to set aside the award and on the contrary, the award has been challenged in appeal before a Division Bench of this Court in CMA No.67 of 1998 and no final orders have been passed till date and implications of Section 17 of the Act will not come into play as no definite and final orders have been passed till date and

f. the learned Sub Judge has erred in holding that the Plaintiff is entitled to interest @ 12% per annum from the date of filing of the suit.

8. Per contra, the learned counsel for the first respondent has contended that the award of the Arbitrator has to be given effect and when there was no action by the appellant even after the notice under Section 14(2) of the Arbitration Act and as per time schedule prescribed under 119(8) of the same, left with no other alternative and in order to enforce the award of the Arbitrator, the O.S. was filed by the first respondent and in fact, the first respondent has paid the necessary Court Fees and the cause of action arose on the date when the notice was issued. The learned counsel has also made a specific plea that the award of the Arbitrator has been confirmed by the learned Sub Judge in the Arbitration O.P. No.824 of 1996.

9. It is the clear findings of the learned Sub Judge that as there was no finality of the Arbitration award and since the proceedings by the Trial Court was not proper, an application was

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filed in I.A. no.599 of 1997 objecting the proceedings. But, the learned Sub Judge has taken on file the above I.A. and after hearing the arguments of the counsel for both sides and in the absence of any stay by this Court to proceed with that case, dismissed the same.

10. While dismissing the O.S., the Trial Court has also relied on a decision of this Court reported in AIR 1978 295 and also yet another decision reported in AIR 1990 Madras 347 in the case of P.K. Chinnasamy Vs. Superintending Engineer, Execution Division, Madurai and Another in which it was held as under:

> "Once there is a refusal to set aside the award, then the implications of Section 17 of the Act come into play and there is no other alternative for the Court, except to pronounce a judgment, as per the terms of the award which shall be followed by a decree. Unless the Court sees cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, a definite and a positive result must follow and that is set out by the statute in S.17. The Court has no option except to pronounce judgment according to the award. It cannot go into merits of the claim."

11. In that view of the matter, the learned Sub Judge has held that the award of the Arbitrator for a sum of Rs.7,80,193.75 with interest @ 12% per annum is perfectly in the proposition of law laid down by this Court and he pronounced the judgment according to the award.

12. When the fact remains that this Court has dismissed the appeal in CMA No.67 of 1998 preferred by the appellant herein while modifying the period for which the interest has to be paid by the appellant and also Cross Objection No.35 of 1998 preferred by the first respondent herein, the only course left out for the appellant herein is to honour the award passed by the Arbitrator and confirmed by the learned Sub Judge in Arbitration O.P. No.824 of 1996 as well as by this Court CMA No.67 of 1998.

Accordingly, the Appeal Suit preferred by Neyveli Lignite Corporation deserves no consideration and accordingly, it is dismissed. No costs.

cad

Sd/-
Asst. Registrar

//true copy//

Sub Asst.Registrar

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To

1.The Subordinate Judge
Virudhachalam.

2.The Section Officer
VR Section
High Court
Madras.

+ one cc to Mr.N.A.K.Sarma, Advocate Sr.No.35743.
+ one cc to Mr.M.Krishnappan, Advocate Sr.No.35570.

VC (CO)
RSM/12.10.2006

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